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Appeals court ruling damages state DUI cases

By Rich Tucker
Times-Union staff writer

A decision from a state appeals court in Lakeland has left urinalysis evidence in driving under the influence cases across Florida vulnerable to attack.

The 2nd District Court of Appeal ruled this week that urine analysis techniques used in DUI cases never underwent a formal review process that would allow their results to be admitted as approved evidence.

Defense lawyers say the ruling effectively negates urine evidence in virtually all pending DUI cases where urine was tested for indications of drug use. It also could have implications for prior convictions in such cases.

"This was a clear failure on the part of the government and the Florida Department of Law Enforcement to recognize there were no approved procedures governing the storage and analysis of urine specimens for the detection of controlled substances," said David Robbins, a Jacksonville lawyer who specializes in DUI cases.

Officials at the State Attorney's Office for Duval, Clay and Nassau counties said they are scanning their dockets to see which cases involve urine evidence, though they could offer no estimates yesterday as to how many could be affected.

Police typically administer urine tests in cases where they suspect a driver is impaired but the driver's blood alcohol level is below the legal limit according to a breath test. The urine tests screen for drugs in a driver's system.

Assistant Attorney General Jenny Scavino Sieg would not comment yesterday on the ruling's potential impact, saying only that state law enforcement officials will decide whether to appeal the decision before it takes effect Nov. 14. A Florida Department of Law Enforcement spokeswoman said her agency was waiting to see if the Attorney General's Office would appeal before taking any action.

But defense lawyers say the ruling provides a new way to contest cases in which drivers are accused of operating their vehicles under the influence of a controlled substance that cannot be measured by breath test. Robbins estimated that such cases make up as much as 20 percent to 25 percent of all DUI cases.

Eilam Isaak, the Tampa defense lawyer in the case that spawned the appellate ruling, said the ruling also could result in overturned convictions in cases that occurred within the two-year statute of limitations

for appeals.

Wednesday's appellate ruling hinged on Florida's implied consent law, under which Florida drivers must submit to urine or breath tests, or they forfeit their driver's license.

The decision states that, under the current system, drivers have been submitting to urine tests believing incorrectly that the tests had been approved. Because the driver was being misled, their consent to the test was, in fact, not voluntary.

"The issue here was not, 'Is this a reliable test?' The issue was, 'Was this test being administered through misinformation?'" Isaak said. "What this opinion does is it orders law enforcement to do their job better."

Robbins said the ruling could prompt a formal review of urinalysis procedures, in which those processes would have to be published and subjected to public scrutiny, in accordance with the Administrative Procedures Act. The review process concludes when the governor gives his stamp of approval.

"It would be similar to the process that breath analysis underwent," Robbins said. "They need to find a way and should find a way to do this right."

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